

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Amendment of Parts 1, 21, 73, 74 and 101 of the	)	WT Docket No. 03-66
Commission's Rules to Facilitate the Provision of Fixed	)	RM-10586
and Mobile Broadband Access, Educational and Other	)	
Advanced Services in the 2150-2162 and 2500-2690	)	
MHz Bands	)	
	)	
Part 1 of the Commission's Rules - Further Competitive	)	WT Docket No. 03-67
Bidding Procedures	)	
	)	
Amendment of Parts 21 and 74 to Enable Multipoint	)	MM Docket No. 97-217
Distribution Service and the Instructional Television	)	
Fixed Service to Engage in Fixed Two-Way	)	
Transmissions	)	
	)	
Amendment of Parts 21 and 74 of the Commission's Rules	)	WT Docket No. 02-68
With Regard to Licensing in the Multipoint Distribution	)	RM-9718
Service and in the Instructional Television Fixed Service	)	
for the Gulf of Mexico	)	
	)	

To: The Commission

**JOINT REPLY COMMENTS OF EBS PARTIES**  
**IN SUPPORT OF JOINT COMMENTS AND PETITION FOR RECONSIDERATION OF**  
**CATHOLIC TELEVISION NETWORK AND NATIONAL ITFS ASSOCIATION**

Alliance for Higher Education, Anaheim City School District, Arizona Board of Regents for Benefit of the University of Arizona, Austin Community College, Belmont University, Board of Education, Special School District #1 (Minneapolis Public Schools), California State University (CALNET), California State University, Long Beach, California State University, Sacramento, California State University, Stanislaus, Copley-Fairlawn City Schools, Fresno County Superintendent of Schools, Friends of WLRN, Inc., Gonzaga University, Grayson County College, Greater Dayton Public Television, Inc., Hawkeye Community College, Johnson & Wales University, KCTS Television, Kern Educational Telecommunications Consortium

(consisting of California State University, Bakersfield, Kern Community College District, Kern County Superintendent of Schools, Kern High School District, and Panama-Buena Vista Union School District), Kirkwood Community College, LaRoche College, Manatee County School Board, Oceanside Unified School District, Okaloosa – Walton College, Oklahoma Educational Television Authority, Oregon Wireless Instructional Network (consisting of Lane Community College, Linn-Benton Community College, Oregon State University, Oregon University System, Portland State University, University of Oregon, Western Oregon University), Palomar College, Pasadena Unified School District, Portland Community College, Poudre School District, Rock Valley College, San Diego Community College District, San Diego County Superintendent of Schools, Santa Ana Unified School District, South Carolina Educational Television Commission, St. Louis Regional Educational and Public Television Commission, St. Petersburg College, State of Wisconsin – Educational Communications Board, University of California at Davis, University of California at Riverside, University of Maine System, University of Wisconsin System, Valencia Community College, Verde Valley School, Vista Unified School District and WITF, Inc. (collectively, the “EBS Parties”), by their counsel, hereby provide these Joint Reply Comments in support of the positions of the Catholic Television Network (“CTN”), and National ITFS Association (“NIA”), as reflected in their Joint Comments filed January 10, 2005 in response to the *Further Notice of Proposed Rule Making*, and their Petition for Reconsideration also filed January 10, 2005 in response to the *Report and Order*, both in connection with the referenced proceeding.<sup>1</sup>

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<sup>1</sup> *Amendment of Parts 1, 21, 73, 74 and 101 of the Commission’s Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands*, Report and Order and Further Notice of Proposed Rulemaking, FCC 04-135 (rel. July 29, 2004), 19 FCC Rcd 14165 (2004).

The EBS Parties are public and private colleges, universities and university systems, state and county boards or offices of education, school districts, community colleges, consortia of educators engaged in distance learning, public broadcasters and governmental or non-profit educational telecommunications entities. Many of the EBS Parties are experienced providers of educational services over EBS (formerly ITFS) stations, providing critical educational services to students and other learners in schools, workplaces and homes. Indeed, among the EBS Parties are operators of some of the oldest, largest and most innovative EBS systems in the country. The EBS Parties collectively reach millions of students and adult/workforce learners, principally through video programming and other related services, but increasingly through interactive digital educational materials. Their foremost interests in this proceeding have been the preservation of these services and their enhancement going forward with the new band plan and rules and anticipated technological and operational advances. Each of the EBS Parties has an important interest in the revised band plan, technical rules, service rules and other elements at issue in this proceeding.

The EBS Parties wholeheartedly support CTN and NIA's positions as reflected in their Joint Comments and Petition for Reconsideration.

#### Transition to New Band Plan

The EBS Parties urge the FCC to reconsider requiring transitions to take place based on Major Economic Areas (MEAs), and support the suggestion by CTN, NIA and others that the FCC use much smaller Basic Trading Areas (BTAs) instead. The EBS Parties also strongly oppose any plan to force EBS licensees operating in markets that have not been transitioned by January 10, 2008 to discontinue operations and surrender their authorizations to an auction process. If the FCC does not abandon this ill-advised concept altogether, and rely on market forces to coordinate the timing of transitions, the EBS Parties support the proposal of CTN and

NIA for a process allowing EBS stations to self-transition as an alternative to losing their licenses.

#### Geographic Area Licensing

The EBS Parties are concerned that the Commission, by allowing both two-way and one-way operations to co-exist in the entire 2.5 GHz band prior to transition will lead to interference problems, and will discourage commercial operators from undertaking transitions to the new band plan. The Commission should also add a desired to undesired (D/U) ratio interference protection requirement for new or modified fixed transmitters in the Mid Band Segment after transition, in order to protect EBS receive sites from co-channel and adjacent channel interference.

#### Replacement Downconverters

The Commission erred in not requiring transition proponents to supply new downconverters to all receive sites of EBS stations located within the stations' old 35 mile protected service areas. Even though receive sites located outside of the new GSAs won't be entitled to interference protection under the geographic licensing approach, most if not all receive sites that were formerly protected will continue to be used, and will be able to successfully receive signals, if they are provided downconverters that filter out all but the MBS band signals. Put another way, providing downconverters at these locations will actually result in less interference.

#### Transition Safe Harbors

The EBS Parties concur with CTN and NIA that two additional safe harbors should be adopted to assist commercial operators and EBS licensees in determining how certain common situations may reasonably be handled in proponents' transitions plans. One such safe harbor addresses how an EBS licensee may be treated if it is currently offering more than one video

programming service. The other addresses situations in which more than one licensee shares a channel group in a particular location. These arrangements were the subject of negotiation and agreement between the commercial and educational communities, and their adoption will facilitate transition planning.

### Secondary Markets

The EBS Parties urge the Commission to clean up several outstanding issues in connection with its application of the new secondary markets leasing rules to EBS excess capacity leasing. The rules should clearly articulate the existing substantive leasing requirements for EBS, which the FCC intended to carry over into the secondary market regime. In addition, the Commission needs to acknowledge that, in the case of *de facto* transfer leases, EBS licensees may not want, and should not be required, to retain responsibility for compliance with rules regarding construction and operation of facilities by lessees, and EBS licensees will not need to require that all station modifications applications and other communications with the Commission be submitted by the EBS licensee, rather than the lessee.

### Four Channel Rule

The EBS Parties urge the Commission to eliminate the old Four Channel Rule, in order to permit EBS licensees additional flexibility in transitions, to enable multiple educators to work together under the banner of a particular licensee, and to permit existing licensees with more than four channels the ability to seek to expand their service areas into the “white areas.”

### Commercial Licenses on EBS Spectrum

There is no further purpose to be served by the old rule provisions that allowed, in certain rare cases, commercial entities operating “wireless cable” systems to be licensed on up to eight EBS channels in certain circumstances. The EBS Parties do not propose changing the status of any existing commercial licensee under the old rule, and existing licenses should be

grandfathered, but the wireless cable exception serves no legitimate purpose going forward, and should not be used as a tool to permit commercial entities to bid against educators in any EBS white space auction.

#### Grandfathered E and F Group EBS Stations

Several of the EBS Parties hold licenses for seventeen (17) grandfathered E and F group stations.<sup>2</sup> The EBS Parties believe that these stations should be considered like any other EBS and/or BRS stations in developing exclusive geographic service areas (i.e., they should obtain GSAs composed of their 35 miles PSAs less one-half of any areas of overlap with co-channel EBS and BRS stations), and their restricted, grandfathered status should end. Thus, they support the views of CTN and NIA on this subject, and vigorously oppose the self-serving position of NY3G, who apparently would sacrifice the seventeen EBS E and F group stations held by the EBS Parties as noted in the footnote below, as well as many other grandfathered E and F group EBS stations around the country.

#### Renewal Requirements

The EBS Parties support the position of CTN and NIA, and many other commenters, regarding performance requirements for license renewal of EBS stations, including deferral of performance benchmarks during the five-year following transition, in order to permit EBS stations to temporarily terminate service in connection with the transition from one band plan, and one service model, to another. In addition, the safe harbors set forth by CTN and NIA

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<sup>2</sup> Anaheim City School District operates EBS station KVP-26 on the F group at Modjeska Peak, California. California State University is licensee of station WGH-268 on the E group at Mt. Wilson and WNC-705 on the E group at Modjeska Peak, both in California. California State University, Stanislaus, is licensee of station WHG-340 on E1 at Telegraph Hill, California. San Diego County Superintendent of Schools runs station WCX-487 on F1-F3 at Mt. Whitney, California, and the F4 channel at that same location is licensed to Palomar College (station WGR-707). South Carolina Educational Television Commission has eleven grandfathered E and F group stations in South Carolina (WHM-939 in Chester, WHN-702 in Seneca, WHN-703 in York, WHN-705 in Spartanburg, WHN-713 in Ridgeland, WHN-714 in Aynor, WHQ-259 in Columbia, WHQ-373 in Lexington, WHR-456 in Cottageville, WHR-471 in Sumter, and WHR-614 in Bennettsville, all South Carolina).

should be adopted, which would result in a finding of substantial service based on certain educational use parameters, and based on an EBS station being incorporated into a commercial system that itself is providing substantial service.

#### Auction Issues

EBS white space auctions should be conducted after the transition deadline, and should be limited to EBS eligible bidders. The auctions should be based on BTAs, with separate auctions being conducted in each BTA for each EBS channel group, with the UBS or LBS portions of the group being auctioned separately from the MBS portion of the group. The EBS Parties believe that there should be no “designated entity” bidding credits, which are not required by statute in these circumstances, and which make no sense applied to EBS eligible entities.

#### Conclusion

The EBS Parties support the positions of CTN and NIA as set forth in their Joint Comments and their Petition for Reconsideration.

Respectfully submitted,

ALLIANCE FOR HIGHER EDUCATION

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